

STATE OF MICHIGAN
IN THE SUPREME COURT

CHARTER TOWNSHIP OF NORTHVILLE,
a Michigan charter township,

Plaintiff,

and

HEATHER SCHULZ and JEFFREY SCHULZ et al,

Intervening Plaintiffs-Appellants,

v

NORTHVILLE PUBLIC SCHOOLS, a Michigan
municipal corporation; LEONARD R. REZMIERSKI,
Superintendent of Northville Public Schools; and
the BOARD OF EDUCATION OF NORTHVILLE
PUBLIC SCHOOLS,

Defendants-Appellees.

Supreme Ct. No. 120213

Court of Appeals No. 219124

Circuit Court Case No.
98-816747-CZ

**MICHIGAN ENVIRONMENTAL
COUNCIL, TIP OF THE MITT
WATERSHED COUNCIL, AND
MICHIGAN LAND USE
INSTITUTE *AMICI CURIAE*
BRIEF IN SUPPORT OF APPEL-
LANTS AND PROOF OF SERVICE**

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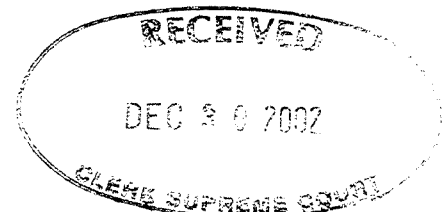


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STATEMENT OF ISSUE PRESENTED

IS A PUBLIC SCHOOL AND ITS BOARD OF EDUCATION, IN THE DEVELOPMENT AND LOCATION OF A PUBLIC SCHOOL SITE, IMMUNE OR EXEMPT FROM REASONABLE LOCAL MUNICIPAL ZONING REGULATIONS DESIGNED FOR THE PROTECTION OF THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE SURROUNDING COMMUNITY IN WHICH THE PROPOSED SITE IS PLANNED TO BE LOCATED?

Plaintiff/Appellant and Intervening Plaintiffs/Appellants answer "no."

Defendants answer "yes."

Amici Curiae answers "no."

INTEREST OF *AMICI CURIAE*

The *Amici* joining in this Brief represent diverse charitable interests. Their respective missions share these common themes: the education of Michigan's citizenry on issues affecting land uses, the promotion of strong communities, the orderly use of land, and the respect for Michigan's natural heritage.

The interests of *Amici* Michigan Environmental Council, Tip of the Mitt Watershed Council, and Michigan Land Use Institute coincide with the Grounds for granting an Application for Leave to Appeal in MCR 7.302(B):

(2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions . . .

(3) the issue involves legal principles of major significance to the state's jurisprudence;

(5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice . . .

The Court of Appeals erroneously found the phrase "site plans for those buildings" to be synonymous with all zoning and land use regulations. This ruling will divest decision-making authority from those specifically trained and legislatively empowered to evaluate issues affecting our single highest risk according to a study commissioned by Governor Engler in 1992.

On July 17, 1992, Governor John Engler released the results of his Relative Risk Analysis Project.¹ Governor Engler's introductory comments offer this observation:

Too often in the past, Michigan's environmental priorities have been set by the crisis of the moment, budget uncertainties, media attention, or conflicting data. I am convinced that it is time to carefully review and evaluate our priorities, and base those priorities on careful thought and scientific information. We must do

¹ *Michigan's Environment and Relative Risk*, funded by the U.S. Environmental Protection Agency and administered by the Michigan Department of Natural Resources, July 1992. Copies were available through the Michigan Department of Natural Resources, Office of Policy and Program Development, P.O. Box 30028, Lansing, Michigan 48909.

this in order to efficiently apply our limited resources to addressing the most serious environmental risks that our state faces.

This report is the culmination of many months of research, analysis, and debate about the most important environmental issues affecting Michigan. The result of these efforts is a list of issues ranked according to their relative importance to the health and welfare of the people of this state and Michigan's ecology.

Amid the flurry of hazards confronting our successors (acid rain, contaminated water, hazardous waste, smog, trace metals, etc.), Gov. Engler's study found our single highest risk involves land use planning. In part, this study states:

In Michigan, *ad hoc* arrangements of government units cut across natural landscapes, and conflicting jurisdictions confound effective planning. Government agencies tend to manage the environment in a reactive, site-specific manner by making isolated decisions about individual activities. The process of making such decisions is encumbered by controversies about public versus private interests, conflicting goals amid different segments of society, and inadequate information for making good decisions. Rarely is attention paid to proactive assessment of social goals for achieving balance between economic development and conservation of a healthy environment. Consequently, environmental management suffers from inadequate broad-based information and ineffective policies and procedures to address such concerns. **For planning to be effective at the landscape level, all players (government entities; private, public, tribal, and corporate landholders; scientists; educators; and other citizens) must discuss their long-term and short-term goals.** (Emphasis added.)²

Just as Michigan's single highest risk from inadequate coordination among governmental entities comes into view, the Court of Appeals stifles an open dialogue on not only site plans, but also on all land use planning and zoning considerations for schools.

Governor Emeritus William G. Milliken recently lamented our failure to secure Michigan's natural heritage for future generations. In his Foreword to Dave Dempsey's *Ruin & Recovery*³ he stated:

² *Id.* at p. 22.

³ Dempsey, Dave, *Ruin & Recovery, Michigan's Rise as a Conservation Leader*, University of Michigan Press, 2001, pp. vii and viii.

One of my great concerns is that despite extraordinary efforts by organizations like Michigan United Conservation Clubs and the Farm Bureau, by Attorney General Frank Kelley, and by members of my own administration, we were never able to achieve legislative adoption of laws to give proper incentive and tools to allow local units of government to properly manage growth. . . .

Recently, I have been reading a good deal on the subject of land use and more specifically, about the trends here in Michigan. I ran across one absolutely stunning statistic. A report by the Michigan Society of Planning Officials predicts that if things do not change here in Michigan, in less than 25 years we will increase our state's population by a little over one million people. But the land area that will be converted to residential and commercial use to serve those one million new citizens will be equal to the amount of land that *nine* million people lived on when I was governor in 1978. . . .

The simple truth is that Michigan has always been and always will be a "quality of life" state. The truth is that the quality of human life in Michigan depends on nature. The natural beauty of Michigan is more than a source of pleasure and recreation. It shapes our values, molds our attitudes, feeds our spirits.

A sentiment on how we are shaped by our habitat also appears in a recent best seller on urban casualties:

It bears repeating: We shape our cities and then our cities shape us. The choice is ours whether we build subdivisions that debase the human spirit or neighborhoods that nurtures sociability and bring out the best in our nature. The techniques for achieving the latter are well known, and available to all who wish to make places worth caring about.⁴

The authors of this bestseller encourage schools to remain rooted in neighborhoods. Accordingly, they encourage schools to function in their historic context, as a vital part of the community:

Concentrations of civic, institutional, and commercial activity should be embedded in neighborhoods and districts, not isolated in remote single-use complexes. Schools should be sized and located to enable children to walk or bicycle to them.⁵

⁴ Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck, *Suburban Nation, the Rise of Sprawl and the Decline of the American Dream*, Northpointe Press, 2000, p. 83.

⁵ Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck, *Suburban Nation, the Rise of Sprawl and the Decline of the American Dream*, Northpointe Press, 2000, p. 259-260.

Michigan yields 240 acres of agricultural land to suburbanization every day,⁶ even while its population remains relatively stable.⁷ This internal migration creates growth in some areas as it produces vacuums in others. We are only beginning to pay the social costs arising from the abandoned places. The escalating loss of open space and natural land sear an indelible imprint on Michigan's natural heritage.

We remain perilously embedded in a fragile, yet resilient, ecosystem. Here, a monumental sprawl-inducing event results from a decision to dissect a school from the heart of a community and then transplant the educational complex on the outskirts. Under the Court of Appeals' opinion, this precipitous and weighty land use decision would reside exclusively with a school superintendent.

Amici are motivated to join this cause by their profound awe of Michigan's natural and scenic legacy. They bristle at the prospect of singularly entrusting major precedent-setting land use decisions with a school superintendent.

Had the legislature designated township zoning boards to exclusively establish the local school curriculum, a sense of bewilderment would descend upon school administrators. Unsurprisingly, the Court of Appeals' decision similarly confounds land use planning professionals.

How might we fare when we become the ancients? How will our actions be viewed by future historians? When they reflect upon the land ethic and stewardship during our watch, will we be remembered as good ancestors? Will they ponder how our magnificent and biodiverse

⁶ Michigan Society of Planning Officials, *PATTERNS ON THE LAND: Our Choices – Our Future*, September 1995, p. 24.

⁷ In the decade of the 1990's Michigan's population increased 568,488, from 9,295,287 to 9,863,775. See <http://www.census.gov/population/estimates/state/st-99-2.txt>.

natural history was dismantled by the uninformed in the blink of an historian's eye? Will they see professional land use planners idled by unusual statutory construction? Or will we be remembered for drawing upon our accumulated storehouse of knowledge in assessing present actions? Will we become known as thoughtful custodians?

History's verdict might depend upon our inclination to include, rather than exclude, informed considerations in land use planning. We merit more, not less, collective wisdom in the public discourse on our stage in time. For this reason, *Amici* support the Application for Leave to Appeal.

The Michigan Environmental Council (MEC) is a coalition of fifty-six environmental and public health organizations located across Michigan with over 175,000 members. This non-profit organization has been in existence for over twenty years. MEC operates a variety of programs designed to address problems related to urban sprawl, health of children, clean energy, and protection of the Great Lakes. The Land Stewardship Initiative, MEC's primary program addressing land use issues, advocates for statewide land use goals, coordinating planning among all levels of government, and providing local government with the growth management tools necessary to protect natural resources. MEC, and its member organizations, are concerned about the significant impacts this case may have on the ability of local governments to manage growth within their communities.

Amicus Tip of the Mitt Watershed Council is a non-profit environmental organization located in Petoskey, Michigan. It is dedicated to protecting lakes, streams, wetlands, and ground water through respected advocacy, innovative education, technically sound water quality monitoring, and thorough research. It works regionally, statewide, and throughout the Great Lakes Basin to achieve these goals. The Watershed Council has over 2,000 members, all of whom reside in Michigan at least part of each year. It performs conservation planning and

resource inventory work for local governments, administers local ordinances for local government, prepares master plans, creates recreation plans, develops resource inventories, and prepares conservation designs for individual property owners. The Watershed Council has a keen interest in the ramifications of this case as it would impinge on the authority of local governments to control their land use planning policies and thus protect the natural resources within their borders.

Amicus Michigan Land Use Institute is a §501(c)3 charitable nonprofit organization founded in 1995. The Institute works to establish an approach to economic development that strengthens communities, enhances opportunities, and protects the state's unmatched natural resources. The Institute operates statewide on a variety of land use issues. Its mission advances land use strategies that respect Michigan's unique character and enhance our quality of life. The Institute has 2,100 member families, individuals, businesses, and organizations, with a statewide membership that includes citizens from all walks of life. The Institute is led by a 13-member Board of Directors, including Michigan's former first lady, Helen Milliken, and former director of the Michigan Department of Natural Resources, Dr. Howard Tanner. The Institute believes school placement decisions are critical to how our communities will grow and evolve.

ARGUMENT

1. **ENABLING LEGISLATION FOR ZONING SPECIFICALLY EMPOWERS TOWNSHIPS TO REGULATE LAND DEVELOPMENT FOR EDUCATION, PUBLIC BUILDINGS, AND SCHOOLS.**

The Township Rural Zoning Act specifically authorizes townships to craft zoning ordinances which include, among other land uses, education:

The township board of an organized township in this state may provide by zoning ordinance for the regulation of land development . . . to facilitate adequate and sufficient provision for transportation systems, sewage disposal, water, energy, **education**, recreation, and other public service and facility requirements; and to promote public health, safety, and welfare. (Emphasis added)⁸

Section 3 of Michigan's Township Rural Zoning Act also authorizes township zoning ordinances to provide for education:

The zoning ordinance shall be based upon a plan to promote the public health, safety, and general welfare; to facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, **education**, recreation and other public requirements; . . . (Emphasis added)⁹

The Township Planning Act empowers townships to create a township planning commission to "make and adopt a basic plan as a guide for the development of unincorporated portions of the township."¹⁰ Section 7(2) of the Township Planning Act provides that the "basic plan shall include . . . public buildings, schools":

The basic plan shall include those of the following subjects which reasonably can be considered as pertinent to the future development of the township:

(a) A land use plan and program, in part, consisting of a classification and allocation of land for agriculture, residence, commerce, industry, recreation, ways and grounds, **public buildings, schools**, soil conservation, forest, wild

⁸ MCL 125.271; MSA 5.2963(1).

⁹ MCL 125.273; MSA 5.2963(3).

¹⁰ MCL 125.321; MSA 5.2963(101).

life refuges, and other uses and purposes. (Emphasis added)¹¹

2. THE MICHIGAN CONSTITUTION OF 1963 REQUIRES LAWS BE LIBERALLY CONSTRUED IN FAVOR OF TOWNSHIPS.

As noted above, the township zoning enabling legislation specifically authorizes townships to adopt zoning plans for education, public buildings, and schools. To the extent any ambiguity, hesitation, or doubt lurks in the statute,¹² the Michigan Constitution of 1963 has provided for township laws to be liberally construed:

The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.¹³

Particularly when construed liberally in their favor, the Revised School Code¹⁴ does not divest townships of zoning authority over schools.

3. BY CONFERRING "EXCLUSIVE JURISDICTION . . . OF SITE PLANS FOR THOSE BUILDINGS" UPON THE SUPERINTENDENT OF PUBLIC INSTRUCTION, THE LEGISLATURE CREATED AN EXCLUSIVE REALM COMMENSURATE WITH THE STATUTORY REQUIREMENT FOR AN ARCHITECT'S OR ENGINEER'S SUPERVISION AND STATE FIRE MARSHAL APPROVAL.

Appellees rely upon the following provision in the Revised School Code in divesting townships of explicit zoning jurisdiction over "public buildings, schools,"¹⁵ and "education"¹⁶:

The superintendent of public instruction has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction,

¹¹ MCL 125.327(2); MSA 5.2963(107)(2).

¹² *Amici* concede no ambiguity exists. Rather, the Constitution is invoked to emphasize the efficacy of township zoning enabling legislation.

¹³ Mich Const 1963, art 7, § 34.

¹⁴ MCL 380.1 *et. seq.*; MSA 15.4001 *et. seq.*

¹⁵ MCL 125.327(2); MSA 5.2963(107)(2).

¹⁶ MCL 125.271; MSA 5.2963(1); MCL 125.273; MSA 5.2963(3).

reconstruction, or remodeling of school buildings used for instructional or non-instructional school purposes and of **site plans for those buildings**. (Emphasis added)¹⁷

A number of statutory provisions govern school construction. For example, our statute requires that:

All plans and specifications for buildings shall be prepared by, and the **construction supervised by, an architect or engineer who is registered** in the state of Michigan. Before the construction, reconstruction, or remodeling of any school building or addition thereto is commenced, the written approval of the plans and specifications by the superintendent of public instruction or his authorized agent shall be obtained. The superintendent of public instruction or his authorized agent shall not issue such approval until he has secured in writing the approval of the **state fire marshal**, or the appropriate municipal official when certification as described in section 3 has been made, relative to factors concerning fire safety, and of the health department having jurisdiction relative to factors affecting water supply, sanitation, and food handling. (Emphasis added)¹⁸

This statute also compels the use of “fire-resisting materials.”¹⁹

The legislative constraints imposed upon the construction project would understandably relieve the school superintendent from further regulations with respect to “those buildings” for architectural, engineering, and fire-safety issues. Accordingly, the preemption provided in the Revised School Code provides “sole and exclusive jurisdiction . . . of site plans for **those buildings**.” This is commensurate with the scope of legislation governing the school superintendent. Appellees would prefer this Court construe the preemption as extending to “site plans for all land uses,” “site plans for transportation plans,” and “site plans for all land use decisions in addition to **those buildings**.”

If the superintendent of public instruction were to decide land use and zoning issues,

¹⁷ MCL 380.1263(3); MSA 15.41263(3).

¹⁸ MCL 388.851(a); MSA 15.1961(a).

¹⁹ MCL 388.851; MSA 15.1961.

the venture would be entirely without legislative guidance. Such unfettered discretion would represent an unconstitutional delegation of legislative power.²⁰

4. SITE PLANS ARE NOT SYNONYMOUS WITH ZONING REGULATIONS.

The Court of Appeals rested its holding on a belief that the phrase “site plans for those buildings” was synonymous with zoning regulations in general. Curiously, even the Court of Appeals implicitly conceded that site plan reviews were but a portion of local zoning regulations:

The grant of jurisdiction to the superintendent of public instruction is exclusive and the statute exempts school construction projects from local zoning regulations, including site plan reviews.²¹

A general class grammatically includes a specific sub-class. And a general zoning regulation includes specific site plan reviews. The Court of Appeals’ sentence structure undermines its holding. It betrays the recognition that zoning regulations embrace more than just “site plan” reviews. By preempting “site plans for those buildings” the legislature did not preempt township zoning regulations for schools.

Even the Appellee’s Brief in response to the Application for Leave to Appeal recognizes that “site plans for those buildings” are not synonymous with land use and zoning regulations:

- “. . . land use regulations, including zoning controls and site plan reviews . . .” (Appellee’s brief, page 14, first full paragraph.)
- “. . . legislative intent to exempt school site plan designs from local zoning controls and site plan reviews . . .” (Appellee’s brief, page 41, bottom.)

If site plan reviews and zoning were synonymous, then neither the Court of Appeals nor

²⁰ *Blue Cross Blue Shield v Milliken*, 422 Mich 1, 50-55; 367 NW2d 1 (1985); *Schechter v United States*, 295 US 495, 528; 55 S Ct 837; 79 L Ed 1570 (1935); *Westervelt v Natural Resources Comm*, 402 Mich 412, 443; 263 NW2d 564 (1978).

²¹ This quote is found at the top of page five in the Court of Appeals’ slip opinion.

the Appellee would grammatically treat them as different properties.

5. LEGISLATIVE INTENT SHOULD BE DISTILLED BY CONSTRUING STATUTES HARMONIOUSLY.

The Michigan Supreme Court has previously determined that legislative intent is to govern preemption issues in zoning cases:

. . . the legislative intent, where it can be discerned, is the test for determining whether a governmental unit is immune from the provisions of local zoning ordinances.²²

The Revised School Code vests the school superintendent with “. . . sole and exclusive jurisdiction . . . of site plans for those buildings.”²³ On the other hand, Michigan’s Township Rural Zoning Act empowers townships to zone for “public buildings, schools,”²⁴ and for “education.”²⁵ It is black letter law that statutes *in pari materia* are to be harmoniously construed. The legal definition of *in pari materia*, as found in *Black’s Law Dictionary, Seventh Edition*, states:

It is a canon of construction that statutes that are *in pari materia* may be construed together so that inconsistencies in one statute may be resolved by looking at another statute on the same subject.²⁶

Michigan also recognizes the doctrine of *in pari materia*. In 1998, the Court of Appeals recently observed:

In determining intent, this Court first looks at the specific language of the statute. If the plain and ordinary meaning of the language is clear, judicial

²² *Dearden v City of Detroit*, 403 Mich 257, 264; 269 NW2d 139 (1978).

²³ MCL 380.1263(3); MSA 15.41263(3).

²⁴ MCL 125.327(2); MSA 5.2963(107)(2).

²⁵ MCL 125.271; MSA 5.2963(1), MCL 125.273; MSA 5.2963(3).

²⁶ *Black’s Law Dictionary, Seventh Edition, in pari materia*.

construction is neither necessary nor permitted, unless a literal construction of the statute would produce unreasonable and unjust results inconsistent with the purpose of the statute. In construing statutes, the court should avoid any construction that would render a statute, or any part of it, surplusage or nugatory. Statutes that relate to the same subject or share a common purpose are *in pari materia* and must be read together as one law, even if they contain no reference to one another and were enacted on different dates.²⁷

Under the doctrine of *in pari materia*, a school superintendent could understandably be empowered to exclusively review and approve “site plans for those buildings” in connection with matters scrutinized by the architect/engineer and fire marshal. To expand upon the meaning of “site plan for those buildings” by encroaching upon matters falling within the province of land use professionals would do violence to Michigan’s township zoning enabling legislation and to the doctrine of *in pari materia*. Moreover, the Preamble to the Revised School Code²⁸ does not purport to empower schools, or their superintendents, to interfere in zoning and land use decisions.

6. IN CONCLUSION, A SUPERINTENDENT’S EXCLUSIVE JURISDICTION OVER “SITE PLANS FOR THOSE BUILDINGS” DOES NOT PREEMPT EXPLICIT STATUTORY ENABLING LEGISLATION FOR TOWNSHIPS TO DETERMINE ZONING AND LAND USE ISSUES FOR SCHOOLS.

On our edge of time, land use decisions will define the quality of life for future generations. Our children merit the insight of ornithologists on migratory corridors for birds in land use issues. They deserve the sensitivity of conservation biologists in forest ecology issues. They did nothing to warrant silencing hydrologists on fresh water prospects. They could benefit from the insight of soil science professionals in identifying the most productive agricultural lands. Under the Court of Appeals’ decision, the musings of professional planners and the

²⁷ *Ypsilanti Housing Comm v O'Day*, 240 Mich App 621, 624-625; 618 NW2d 18 (2000). In accord: *Jones v Slick*, 242 Mich App 715; 619 NW2d 733 (2000); *Titan Ins Co v Farmers Ins Exch*, 241 Mich App 258, 260; 615 NW2d 774 (2000); *Camden v Kaufman*, 240 Mich App 389, 395; 613 NW2d 335 (2000).

²⁸ MCL 380.1 *et. seq.*; MSA 15.4001 *et. seq.*

scientific community will become little more than a poor apology to our successors.

The lack of coordinated land use planning in the public sector has been hailed by Governor Engler's Relative Risk Study as Michigan's single highest risk. As water resources are incrementally compromised, as we are confronted by the most severe extinction spasm in the history of life on earth, and as transplanted schools usher in another wave of sprawl-induced losses, we are now uniquely well-poised to appreciate the prescience of Engler's Relative Risk Study. Lamentably, our awakening coincides with the Court of Appeals' unwillingness to distinguish land use planning from "site plans for those buildings."

Ironically, just as we equip communities with better tools to assess our responsibility to the future, the Court of Appeals purges them from a community's tool chest. Just as valued expertise in resource management is becoming accessible, the Court of Appeals leaves us with the sole discretion of a school superintendent. Just as our footprints on the future are visualized in Engler's Relative Risk Study, the Court of Appeals dims the view.

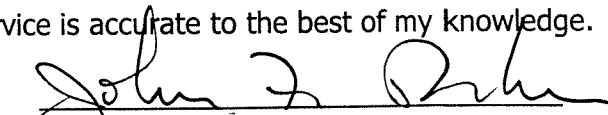
CONCLUSION

Amici respectfully request this Honorable Court to reverse the decision of the Michigan Court of Appeals.

PROOF OF SERVICE

On this date, two copies of this Brief are being served, by First Class Mail, upon Susan K. Friedlaender, Robert A. Lusk, Anthony A. Derezinski, and James F. Tamm, at the addresses indicated in the caption. This Proof of Service is accurate to the best of my knowledge.

DATE: December 27, 2002


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